



U.S. Citizenship
and Immigration
Services

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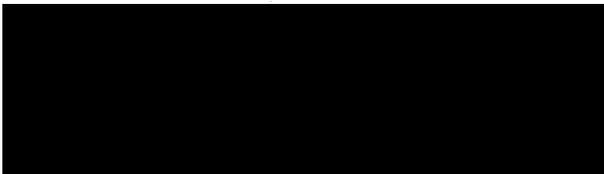


FILE: EAC 02 292 52266 Office: VERMONT SERVICE CENTER Date: SEP 27 2012

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a not-for-profit association providing services to the developmentally disabled. In order to employ the beneficiary as a client coordinator, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner failed to establish that the proffered position is a specialty occupation.

On appeal, counsel contends that the director erred, because the evidence of record establishes that the proffered position is a specialty occupation. For the reasons discussed below, the AAO has determined that the director was correct in denying the petition. Accordingly, the appeal will be dismissed and the petition will be denied.

In reaching its decision, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the documentary evidence submitted with the brief.

It appears that counsel contends that the type of bachelor's or higher degree required to qualify a position as a specialty occupation does not have to be in a specific specialty with a body of highly specialized knowledge directly related to the position. At page 2 of the brief counsel states, in part:

Contrary to the Service contention, the Standards [at 8 C.F.R. § 214.2(h)(4)(iii)(A)] do not require a degree or its equivalent in a narrow field of study to qualify the position for a specialty occupation. Rather[,] the Standards set forth the alternative ways of establishing that the proffered position warrants the requirements of a Bachelor's degree. . . .

This view is without merit.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus it is clear that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge.

Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty.

In line with this section of the Act, 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires *the attainment of a bachelor's degree or higher in a specific specialty*, or its equivalent, as a minimum for entry into the occupation in the United States.” (Italics added.)

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In accordance with the statutory and regulatory provisions to which 8 C.F.R. § 214.2(h)(4)(iii)(A) is related, Citizenship and Immigration Services (CIS) has consistently interpreted the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the evidence demonstrates that the petitioner has proffered a position which requires neither the theoretical and practical application of a body of highly specialized knowledge nor the type of specialized degree which signifies the attainment of such knowledge.

The evidence presented about the specific duties of a proffered position is always a critical factor in CIS determinations on the specialty occupation issue. The petitioner’s Form I-129 described the proposed duties as follows:

[R]esponsible for overall coordination and direction of program staff and participants. Responsible for the development and maintenance of positive relationships with funding sources [sic], fellow providers, schools, training sites, employers, participants and their families, and staff[.]

In its letter of support filed with the Form I-129, the petitioner described the proposed duties as follows:

- Arranges for the use of community resources and coordinates and provides liaison between the client and the community, including medical services, home health agencies, community social agencies, and other generic resources.
- Completes DDP's [sic] annually. Develops and writes individual services plan; follow-up quarterly meetings and monthly summary [sic] notes; reviewing all services rendered on a monthly basis. Assist[s] participants and their families in assessing services such as Social Security, Medicaid and other.
- Completes Individuals [sic] Service-Reporting form for Senior Program; completes Agency Quarterly Summary of Services and Individuals [S]erved for [the] Seniors Program.
- Works directly with clients.
- Assists client to make optimal adaptation to utilization of positive change in environment.
- Acts as liaison between program and families and/or residential programs.

On appeal (brief, at page 4), counsel provides the following description of the duties, stating that it "indicates that the Client Coordinator must perform numerous specialized duties requiring a minimum of a Bachelor's degree":

- overall coordination and direction of program staff and program participants which entails such specialized functions as planning, solving problems and training others;
- development and maintenance of positive relationships between participants and their families and schools, training sites, and employers, which entails [sic] such specialized functions as educating the communities about MR/DD, devising methods and procedures, and formulation of ideas;
- development and writing of individual services plans, quarterly meetings plans and monthly summary notes, which entails such specialized functions as analysis of psychological and medical reports and records, developing, formulation of ideas, review and evaluation, and planning;

- review [of] all services rendered on a monthly basis, which entails such specialized functions as analysis, review, and evaluation;
- assists participants and their families in assessing services such as Social Security, Medicaid and others, which entails such specialized functions as analysis of the participant's financial, legal and medical situations, research of social services system, consultation, and representing clients;
- arranges for the use of community resources and coordinates and provides liaison between the program participants and the community, which entails such specialized functions as research of available community resources, coordination, planning, designing, representing clients and solving problems. [Underling in the original.]

In the letter of support (at page 2) that it submitted with the Form I-129, the petitioner noted that it “employs 10 other Client Coordinators,” and, in his cover letter describing all the documents submitted with the Form I-129, counsel indicated that the resumes of ten persons included among those documents were “for 10 other Client Coordinators.” In the order in which these resumes appear in the record, they assert the possession of the following degrees by the petitioner’s client coordinators: (1) a foreign baccalaureate in business administration; (2) no degree, but continuing education in psychology at a U.S. college; (3) a U.S. baccalaureate in psychology, with a minor in counseling; (4) a U.S. baccalaureate in community mental health; (5) a U.S. baccalaureate in fine arts; (6) a U.S. baccalaureate in psychology; (7) no degree, but a U.S. 2-year teacher’s certificate and courses of study in elementary education and early childhood education; (8) a U.S. baccalaureate in historical studies/exercise science, and also ongoing studies for a master’s degree in psychology; (9) a U.S. baccalaureate in philosophy, politics, and law; and (10) a U.S. baccalaureate in clinical psychology.

Counsel’s reply to the RFE included copies of resumes and/or diplomas of nine other persons which counsel identified as belonging to the persons currently employed as client coordinators at the time of the RFE reply. In the order in which they appear in the record, these documents are: (1) a translation of a diploma for a foreign master’s degree in education (musical and vocal); (2) a resume asserting a foreign baccalaureate degree in education and a foreign master’s degree in psychology and psychology; (3) a resume asserting a U.S. master’s degree in special education; (4) a diploma for a U.S. master’s degree in special education; (5) a resume asserting a foreign baccalaureate in elementary education; (6) a resume asserting a U.S. baccalaureate degree in elementary education and English, with a minor in elementary studies; (7) a resume asserting a foreign master’s degree in “teaching English/French specializing in linguistics and philology,” together with a translation of foreign diploma documents; (8) a resume asserting a foreign baccalaureate degree in teaching history and English, together with a translation of related foreign diploma material; and (9) a resume asserting a foreign master’s degree in teaching (philology: literature and language), together with a translation of a related foreign diploma.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This provision assigns specialty occupation status only to those positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position’s duties. The

totality of the evidence, including the petitioner's explanations for the necessity of a baccalaureate degree, does not establish that the proffered position normally requires that particular type of bachelor's degree or equivalent that is the distinguishing feature of a specialty occupation: one in a specific specialty with a body of highly specialized knowledge that must be theoretically and practically applied to perform the duties of the position. *See* section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), *supra*.

Counsel's contention that "[t]he position of Client Coordinator is a specialty occupation because it requires a bachelor's degree in Human Services" (brief, at page 2) is without merit. The decision will first address four of the petitioner's submissions with regard to the educational credentials required for the proffered position. Three of these are printouts from the National Organization for Human Services Education (NOHSE), and the fourth is a letter from the professor of English who is the Academic Director of the City of New York (CUNY) Baccalaureate Program at the CUNY Graduate Center.

The first NOHSE document, entitled "The National Organization for Human Services Education," is a self-promotional presentation aimed at attracting new members to that organization. This document has little relevancy to this proceeding beyond general information it provides about NOHSE as the organization that produced the other two NOHSE documents in the record.

The information about the human services workers educational programs in the second NOHSE document, entitled "Human Service Education," is inconsistent with counsel's contention that the proffered position is a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). This is clearly evident in the range of educational degrees which the document cites for human service workers, which includes certificate and associate degree programs as well as baccalaureate degrees; the broad range of academic departments providing degree programs for human service work; the broad range of subject areas covered within degree programs (such as "courses in English, history and the sciences, especially the social sciences"); and the skills which these educational programs aim to develop, such as "interviewing," "observing and reporting pertinent information," "conducting groups," "implementing [not creating] treatment plans," "consulting with other workers and agencies," "mobilizing and utilizing community resources," "problem solving," and "advocating for clients." That the human services worker occupation does not require the practical and theoretical application of a highly specialized body of knowledge required to qualify as a specialty occupation is aptly communicated by the statement (at page 2 of the document) that human services education and training programs were created "not to train another group of specialized professionals but to develop an entirely new kind of worker, the 'generalist.'"

The third NOHSE document, entitled "The Human Services Worker: A Generic Job Description," present six types of "major generic knowledge, skills, and attitudes that appear to be required in all human services work." The AAO finds that this particular information indicates a type of job that requires an application of generic skills and abilities - such as planning, problem solving, sensitivity to values, and effective oral and written communication - that do not involve the understanding and application of a body of highly specialized knowledge that could be obtained only by achieving at least a baccalaureate degree or the equivalent in a specific specialty.

For each of several independent reasons, the AAO discounted the opinion from the English professor/baccalaureate academic director about the educational requirements of the proffered position.

The content of the opinion is inconsistent with the definition of a specialty occupation in the CIS regulations upon which it asserts it is based. This professor/academic director opined that a client coordinator in the field of mental retardation/developmental disability “is a specialty occupation as defined in the immigration regulations because it requires a four-year degree in the specific field of study notwithstanding the fact that an individual with a four-year degree in Human Services as well as in Education, Psychology or Sociology is qualified for this position.” This broad spectrum of four distinct academic disciplines indicates that performance of the position does not depend upon the possession or application of a body of highly specialized knowledge from a specific specialty. Furthermore, that performance of the proffered position is not dependent on the application of a body of highly specialized knowledge that could only be attained by a baccalaureate or the equivalent in a specific specialty is reflected in the professor/academic director’s own statement about the type of knowledge “Human Services professionals” must apply: “This demands a broad interdisciplinary knowledge base designed to develop one’s understanding of human nature.”

Also, the information about the professor/academic director’s background in this and the other letter from her in the record does not persuade the AAO that she has such specialized knowledge about the human services field or the requirements of the proffered position that her opinion should be accorded special deference in these areas.

Furthermore, the AAO finds that the professor/academic director’s conclusion about the proffered position’s education requirement is inconsistent with: the relevant information in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, as will be discussed below; the nature of the duties as described in the record; and the information in the record about the educational credentials of persons that the petitioner has hired for client coordinator positions (which includes such distinctly different academic backgrounds as business administration; psychology; community mental health; fine arts; historical studies/exercise science; sociology; philosophy, politics, and law; and a variety of education areas, such as elementary education, teaching French/English, and special education.)

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. In its deliberations in this proceeding, the AAO consulted the 2004-2006 edition of the *Handbook* and determined that the duties of the proffered position substantially comport with those described for social and human services assistants at pages 197, 198. While recognizing that “some jobs may require a bachelor’s or master’s degree in human services or a related field such as counseling, rehabilitation, or social work” and that employers “[I]n general” require a baccalaureate or higher degree for advancement, the *Handbook* clearly observes that a baccalaureate or higher degree is not a normal requirement for entry-level positions:

While a bachelor's degree usually is not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences meet most employers' requirements. Some jobs may require a bachelor's or master's degree in human services or a related field such as counseling, rehabilitation, or social work. [Excerpt from page 198.]

In short, because the evidence does not establish that a baccalaureate or higher degree, or the equivalent, in a specific specialty is normally the minimum requirement for entry into proffered, the petitioner has not met the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status if the evidence establishes the position as one for which there is a specialty degree requirement which is common to the industry in positions which are both (1) parallel to the proffered position, and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As discussed above, the evidence of record does not align the proffered position with an occupation for which the *Handbook* reports a degree in a specific specialty as a minimum entry requirement. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

The eleven job vacancy advertisements in the record from other employers are too few to establish that there is an industry-wide hiring requirement for a baccalaureate degree in a specific specialty. For this reason alone these documents have no significant probative value. Furthermore, the petitioner has not presented any evidence to establish that the positions are parallel to the one proffered here. The duties information in some of the advertisements is too limited to use as a basis of comparison with the proffered position. Other advertisements clearly relate to jobs with duties and responsibilities that material exceeding those described in the record for the proffered position. See, for instance, the advertisements for the Mental Health Coordinator with the MSW/CSW (Master's in Social Work/Clinical Social Work); the Family Case Manager with MSW/CSW; and the Social Service Coordinator with MSW/CSW preferred. It is also noted that two of the advertisements explicitly state that they are for a "Mid-Career (2-15 years)" level of experience, which exceeds the experience required for the proffered position, and that one of the advertisements allows for the substitution of work experience for up to two years of college studies.

The petitioner also has not established that the proffered position qualifies under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Under this provision, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. To the extent that that it is depicted in the record, the proffered position comports with the type of entry-level human services position for which the *Handbook* indicates that there is usually no requirement for a bachelor's degree in any area of study.

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been satisfied, because the petitioner has not established that the employer normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. Contrary to counsel's assertion, its advertisement that has been running on its Website since January 2001 is not conclusive. The time span is too short, and, what's more, the advertisements do not establish a course of hiring. On the other hand, the record reveals a history of hiring persons along a wide spectrum of academic concentrations, and this history conclusively shows that the petitioner has not limited its hiring to persons with at least a bachelor's degree or the equivalent in a specific specialty. Aside from the diversity of the petitioner's client coordinators' academic concentrations, it should be noted that the evidence of record is insufficient to establish that the client coordinators with foreign educational backgrounds obtained the equivalent of U.S. baccalaureate degrees. See 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(2) and (4), and (D).

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that proposed duties are so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. As described in the record, the proposed duties are compatible with the *Handbook's* observation that social and human service assistant positions do not generally require a bachelor's degree. The AAO finds that, while the proposed duties appear to require skills in such generic, unspecialized areas as problem solving, planning, factual analysis, and communication, the record has not established that these duties are especially specialized and complex.

Because the petitioner has failed to establish that the proffered position meets any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO shall not disturb the director's decision.

Beyond the director's decision, it is noted that, while the director did not expressly deny the petition on the grounds of the beneficiary's qualifications, he did comment to the effect that the beneficiary's political science degree is not one of the human services degrees which the petitioner asserts is required by the specialty occupation, and that the political science degree does not clearly relate to the proffered position. On the basis of the entire record, the director would have been correct in specifically denying the petition on the additional ground that the beneficiary does not possess the necessary degree to qualify to serve in any specialty occupation in the human services area.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

- (C) (i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As licensure is not an issue, paragraph B (“completion of the degree described in paragraph (1)(B) for the occupation”) is the pertinent provision. The paragraph to which it cites is Section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), *supra*, which refers to “a bachelor’s or higher degree in the specific specialty.” In line with these statutory provisions, 8 C.F.R. § 214.2(h)(4)(iii)(C), states that, to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Counsel maintains that the record establishes that the beneficiary is qualified to perform specialty-occupation services in the human services area because the aforementioned CUNY professor/academic director issued an opinion to the effect that the beneficiary’s work experience and studies in School Psychology, Pedagogy, Teaching Methods in Social Sciences, Teaching Practice, Sociology of Education, and “extensive courses in Psychology and Sociology” “are appropriate qualifications for the position of Client Coordinator as described.”

Aside from the fact that, as earlier discussed, the proffered position is not a specialty occupation, the professor/academic director’s opinion is not evidence that the beneficiary is qualified to serve in the proffered position by virtue of “a degree in the specific specialty” as required by section 214(i)(2)(B) of the Act, 8 U.S.C. § 1184(i)(2)(B), *supra*, or a “degree required by the specialty occupation” as specified by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), *supra*. Rather, at most the opinion indicates the view of one person (who, as indicated earlier, has not shown expertise in the area in which she opines) that a combination of “interdisciplinary” coursework and experience equips the beneficiary to perform the proffered position. Furthermore, the totality of the other evidence in the record does not establish that the beneficiary’s foreign

political science degree is a degree in any specific human services specialty. Accordingly, the petition must also be denied on the ground that the petitioner failed to establish that, in accordance with the beneficiary qualification requirements of section 214(i)(2)(B) of the Act, 8 U.S.C. § 1184(i)(2)(B), and 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary's degree is in a specific specialty that is required by the proffered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.